# *STATE DEVELOPMENT, NATURAL RESOURCES AND AGRICULTURAL INDUSTRY DEVELOPMENT COMMITTEE*

**Members present:**

Mr CG Whiting MP (Chair)
Mr DJ Batt MP
Mr JE Madden MP
Mr BA Mickelberg MP
Ms JC Pugh MP
Mr PT Weir MP

**Staff present:**

Dr J Dewar (Committee Secretary)
Ms C Furlong (Assistant Committee Secretary)

## PUBLIC HEARING—INQUIRY INTO THE NATURAL RESOURCES AND OTHER LEGISLATION AMENDMENT BILL

### TRANSCRIPT OF PROCEEDINGS

**MONDAY, 25 MARCH 2019**

**Brisbane**

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**The committee met at 10.34 am.**

**CHAIR:** Good morning. I declare open this public hearing for the committee's inquiry into the Natural Resources and Other Legislation Amendment Bill 2019. I acknowledge the traditional owners of the land on which we gather today. Thank you for your interest and your attendance today. My name is Chris Whiting. I am the member for Bancroft and chair of the committee. The other committee members with us today are Mr Pat Weir, deputy chair and member for Condamine; Mr David Batt, member for Bundaberg; Mr Jim Madden, member for Ipswich West; Mr Brent Mickelberg, member for Buderim; and Ms Jess Pugh, member for Mount Ommaney.

The committee's proceedings are proceedings of the Queensland parliament and are subject to the standing rules and orders of the parliament. Proceedings are being recorded by Hansard and broadcast live on the parliament's website. Media may be present and will be subject to the chair's direction at all times. The media rules endorsed by the committee are available from committee staff if needed. All those present today should note that it is possible you might be filmed or photographed during proceedings. I ask everyone to turn mobile phones off or to silent mode.

On 18 April 2019 the Hon. Anthony Lynham MP, Minister for Natural Resources, Mines and Energy, introduced the Natural Resources and Other Legislation Amendment Bill 2019 into the parliament. The bill has been referred to this committee for consideration.

## BARGER, Mr Andrew, Economics and Infrastructure Policy Director, Queensland Resources Council

## HANSEN, Ms Emma, Resources Policy Senior Adviser, Queensland Resources Council

**CHAIR:** I now welcome representatives from the Queensland Resources Council. Would you like to make an opening statement.

**Mr Barger:** I acknowledge the traditional owners on whose country we meet today and offer my respects to their elders past, present and emerging. I would like to thank the committee for the opportunity to appear today and talk to the detail of our submission on behalf of our members. Fortunately I am joined by Emma, who will do most of the heavy lifting because, as you have seen, our submission focuses largely on the tenure issues but it is an extraordinarily broad omnibus bill. In introducing it, Anthony Lynham must have almost tossed up whether it was easier to list the bills that it did not amend. My tally marks on the introductory speech got to 29, which is probably up there as a personal best in terms of number of bills amended.

The Resources Council is the peak representative body for resource sectors operating in the state. We have a very broad membership: gas, minerals processing, mining and exploration. A lot of those operations touch the state's regional and remote communities as well as the extended supply chains that supply our business. If you look at the number of jobs that are indirectly and directly supported by the industry, about one in five Queenslanders benefit directly from the industry and about one in five dollars in the Queensland economy flows out of the industry.

Based on our members' data, we have been able to track that last year about 14,200 Queensland businesses supplied directly to the industry and about 1,200 community groups and charities benefited from the industry. We talk a lot about royalties. Prices are high at the moment. They are running at record levels. Last year about $4.3 billion went to the state government. In just the last week we have launched what we are calling the Maroon Fund. Given that metallurgical coal in particular has been running well above Treasury forecasts, there is about $1.2 billion in the Canberra coffers that we think could usefully flow back to Queensland, so we are calling on regional communities to identify projects and make suggestions to the Commonwealth opposition and also the Treasurer about how that windfall revenue could be spent.

I have talked a little bit about the breadth of the NROLA Bill. There are 29 different acts that it amends. I will talk a little bit about the water legislation and some of the electricity amendments, but I will now introduce my colleague Emma, who will talk about the guts of the QRC submission, if you like: the tenure issues.

**Ms Hansen:** Regarding the tenure management changes, QRC have a number of concerns with certain areas that may require further attention from the department. QRC would like to stress that the tenure changes stem from a very large body of work done by the department over a number of years. QRC is broadly quite happy with the consultation process and the changes proposed, but the nature of putting a submission in on a bill is that you highlight the parts that you have issues with. QRC's submission focuses on those remaining issues that our members see with the bill, but we would like to take this opportunity to commend the hard work undertaken by the policy team within DNRME to get the tenure management changes to this point.

The tenure amendments represent a significant change for how our members manage their tenure, particularly in relation to exploration permits. QRC members have mostly accepted these changes but, as stated in our submission, key issues for industry include the transitional relinquishment requirements and ensuring that proponents will not be subject to more strenuous relinquishment requirements when transitioning existing tenures to the new system; consideration for relinquishment deferment where applications have been made for higher forms of tenure; the broad conditioning power given to the minister by section 277(3) of the P and G act; and the impact of capped terms in relation to overlapping tenure lockout provisions.

**Mr Barger:** I will briefly mention some of the water amendments. There is a flow of recommendations out of the recent review of Queensland's non-urban water infrastructure. That has been quite a good, transparent process in terms of how that review has been run. We support the recommendations that have come out of that process and we think they have been translated fairly faithfully into the bill. We support the water amendments that have been made. They are largely focused on agricultural non-urban use, but there will be implications for our members in some of the details around the way water meters are measured and managed. I think there is a good process in play to transition those operations across, so I think that should run fairly smoothly.

The other issue that our submission briefly touches on is some of the amendments around the establishment of a new government owned renewable energy generator. QRC supports those changes. It seems completely consistent with the way the existing generators have been set up so, again, we do not really see much controversy around those proposals in the bill. I am happy to take any questions about any of the issues that the bill touches, but preferably if it is in our submission.

**CHAIR:** Thank you. One of the things we are talking about is the time limits for exploration permits. From what I can understand, the main issue seems to be the overlapping tenures and potentially being locked out. Is that the main issue here or is the main issue for QRC about setting those time limits of 15 years?

**Ms Hansen:** I think you are right: the main issue is in relation to capped terms. Capping the overall life of the permit to 15 years is going to be overlapping tenure, because there are certain scenarios where you could be locked out of your tenure for 10 years, so that does not really align. I understand that the department is looking into how we address that. Because of the transitional conditions, the tenures that are current right now will have another 10 years, regardless of how old they are, so we have a bit of time to deal with that issue.

The main issue QRC has, I think, is the relinquishment transition. As part of your tenure you have to drop certain amounts of land at certain times. For existing tenures that can be a bit complicated. Our current system is 40 per cent at year 3 and then 50 per cent at year 5. That is for mineral and coal, but the transitional is going to be 50 per cent at year 5. It is just proving very complex as to how to transition tenures from that system to this system and how to acknowledge existing relinquishment, deferred relinquishment or things like that and put it into the new system so that people are not having to adhere to more strict requirements or be quite disadvantaged by the transition, particularly given that now there is a cliff face for the term and there is also a restriction on the ability to apply for variations for your tenure. That combined gives a bit of tension with that transitional relinquishment.

**CHAIR:** I will come to the question of relinquishment in a moment, I just want to confirm that there are no major issues with setting that time limit on those exploration permits, apart from potentials that may arise from an overlap where a proponent may be locked out for about 10 years or so on exploration. Have I got that right so far?

**Ms Hansen:** Yes. QRC members are broadly accepting. I think the next issue we will see, though, is that, because it is that 15 years before you move to a higher form of tenure, there might be a bit of an issue in terms of what you need to achieve before you can transition to the higher form of tenure. That is a threshold policy issue and that is something we will deal with with the department. I think that will be the next step, because proponents will have to start thinking, 'Well, I have this lifetime and it needs to be easier to get to the next form if you want me to progress the tenure.'

**CHAIR:** Has there been an example where a proponent has been locked out before the tenure has expired? That obviously has not been an issue so far because there has been no cap on this exploration.

**Ms Hansen:** Yes, that is right.

**CHAIR:** So it is a potential problem but it is not one that has been experienced before?

**Ms Hansen:** No, because there is no limit and I think the hubs are generally pretty good in saying, 'You can't get on the land; of course we are going to renew your tenure.' It has not happened yet but it will.

**CHAIR:** We will come back to the issue of relinquishment because that is the issue our committee spent the most time reading about and trying to establish exactly what it means. It is obviously a technical and complicated issue, but I will first ask if the member for Condamine has any questions.

**Mr WEIR:** I notice that you had a few concerns around ministerial powers. You highlighted the outcomes based work program and also exceptional circumstances. Would you like to elaborate on your concerns in those areas?

**Ms Hansen:** The work program has largely been dealt with by the department. Initially when the bill was proposed you would have to submit indicators as to both types of work programs—outcomes based and activities based—and the minister was going to choose which one. Proponents would have to present a lot of information and then be bound by either, depending on the minister's decision, but that has since been removed from this bill so QRC is happy with the work programs.

In terms of the exceptional events, there is now a ministerial power where he can impose, vary or remove conditions into circumstances in exceptional events or where there is a policy, I think. At the moment the policy is called exceptional events but the bill references exceptional circumstances. It is things that are outside of the proponent's control such as weather events, global financial crises or things like that. Originally that power was very broad and it was not conditioned, with the minister being able to use it only in exceptional events. The minister could use it whenever he thought it appropriate. That did make some of our members a little nervous. As long as we can work with the department on what exceptional circumstances or exceptional events look like, the QRC accepts that section.

**Mr WEIR:** So you have an idea of how you would correct that?

**Ms Hansen:** I think we would engage with the department. The policy at the moment is fairly broad, but we will have to talk to the department further as to whether they are thinking about keeping that. I have not had any indication from the department as to whether they are reconsidering that policy in light of the new powers, so we might have to talk to them.

**Mr WEIR:** We might put that to the department later in the morning.

**Mr Barger:** It is probably also worth briefly mentioning that the APPEA submission particularly calls out a concern around petroleum exploration tenures and a ministerial conditioning power there. Again, there is this flavour of a broad new power which might be applied after a tenure application has been made, so there is potential for a surprise there that the industry is a bit jumpy about. I think the APPEA submission did a pretty good job of describing that.

**Mr MADDEN:** Thank you both for coming in today. I want to follow on from what the member for Condamine asked you. This issue is also dealt with in the submission from the Queensland Law Society, which raises the issue of taking away natural justice with regard to the variation of conditions. Can you explain what the current appeal rights of a leaseholder are if the conditions are to be varied? I am sorry if it is outside your brief.

**Ms Hansen:** It is a little.

**Mr Barger:** Could we take that on notice?

**Mr MADDEN:** Yes. I apologise for asking you this question; it is probably more a question for the department. If you are going to take the question, the question is: could you explain the current appeal rights for a leaseholder where the minister chooses to vary the conditions of the lease?

**CHAIR:** If you could get back to us, that would be appreciated. It is something that we will be asking the department later.

**Mr BATT:** You mentioned capped terms and the lockout provisions. You are hoping the department would look at ensuring parties are not intentionally disadvantaged. Can you go through what the main issues are? Have you got any further with the department on that since, or is it at the negotiation stage?

**Ms Hansen:** The main issue is: if you have an overall life of the tenure, that is capped. In an overlapping situation, where there is coal and then there is gas on the same tenure, either party could potentially be out of that section of the tenure. Because of safety requirements, they are not allowed into it, so it is a full lockout. It is negotiated between the parties but that is what happens. If you have a capped term on a particular permit and you are coming up to that line, you could potentially be locked out for 10 years because it is the life of the other operation. If you have a cliff face on an exploration tenure and you have 10 years of lockout and you have a 15-year total permit then you have five years to get everything done, which can be pretty complicated.

At the moment those tenures just roll over because the hubs know, and there is no limit on the number of times you can have it renewed. The issue with capped terms creates a real problem in that scenario, but the department is alive to that issue and is thinking about how we can solve it. They have put in a transitional for capped terms, which is that any tenure that is current, no matter how old it is—it could be a tenure that is already 13 years old—will have another 10 years from when this bill is current. We will have a little bit of time at least to work through that issue.

**Ms PUGH:** My question goes to the resource authorities and other miscellaneous section of the bill. I have noted that part of the bill—obviously it is an omnibus bill—will replace the term 'rehabilitation' with 'remediation' to distinguish between environmental rehabilitation obligations under the EPA. Can you explain why changing these terms is important?

**Ms Hansen:** Our understanding of that section is pretty consistent with the explanatory notes that were tabled with the bill. It is appropriate that the terms are differentiated because of the different context with abandoned mines. That is QRC's position.

**Mr Barger:** There were a couple of submissions made on this point calling for a change for a consistent term to be used. Our submission argues that there is a useful differentiation where you are dealing with a historic mine site where the proponent has handed it back to the state and the state has accepted it so the state has responsibility for managing that site. That is quite different from an existing operation where a proponent has a requirement to rehabilitate the site to an agreed land use.

The people who are arguing that you should apply a consistent ruler across both categories are perhaps being a bit mischievous in not understanding that useful differentiation between the high standard that the industry delivers and is required to deliver under legislation for an operating site versus the legacy issues from mines that might have operated in the 1880s where the state is now the proponent. If you applied the same standard, there would be considerable expense to the public purse to come up with an agreed final land use. It would be difficult for the state to regulate itself in a negotiation about what an agreed land use would be.

It is one of those arguments that seems very sensible: 'Here is some new legislation; let us just apply it universally.' However, if you start reaching down into the detail you open up a big can of worms about how you might do that. As Emma was saying, we think the explanatory notes do a pretty good job of stepping through the differences, but it is probably a good thing to get some clarification from the department on later this morning.

**Mr MICKELBERG:** You raised concerns in your submission with respect to the breadth of the bill. You made some comments in your opening remarks as well. Have you had feedback from your members with respect to challenges, considering the ramifications of this bill, in the short period that has existed between when the bill was introduced and when submissions closed?

**Mr Barger:** Some of the feedback was probably unprintable. Some of it was heavy objects hitting desks that sounded like foreheads. I think the Glencore submission mentions that some of these tenure reform issues have been cooking away for six years so they are deeply understood, finely nuanced, complicated issues that there has been good engagement on. Thrown into that mix are other things like the energy changes that look very straightforward and simple. To answer your question, there is a lot of concern about the breadth of the bill. It is very difficult to sit down and read cover to cover and be confident you have a handle on everything, because there are cross-references all over the shop.

Some of the really complicated and important issues, like tenure reform and water, are part of a long-running consultation process. There is a fair bit of confidence that the departments involved understand the stakeholders' views and even since the bill has been tabled have been open to questions and discussions about how they have been interpreted. I think the strength of consultation around some of the difficult issues gives stakeholders some confidence, but in an ideal world you would not be trying to write a definitive submission on this bill in 15 business days. It is a lot of elephant to try to eat.

**Ms Hansen:** The tenure reform has been going on for a while. I think where we hit issues with quick turnarounds is the transition issues, because you are trying to do that at the very last minute and that is not something we have talked about for six years; that is something we have talked about for a couple of months. That is where we need further engagement from the department, particularly the transitional relinquishment requirements.

**CHAIR:** To wrap up, as I said, we have looked at transitional relinquishment issues. From what I understand, relinquishment is about handing back the land in a rehabilitated or remediated form. Have we got that correct?

**Ms Hansen:** Yes. You might have 100 subblocks at the start of your tenure and then at various points you have a percentage requirement of that land that you have to drop to show that you are moving on, you have an exploration permit, you have done your exploration, you know that this area is more prospective. You need to start dropping land because it is part of not land banking and progressing that tenure. At the moment, those requirements for coal and mineral is that if you have 100 subblocks you drop 40 per cent of that at year 3, and at year 5 you drop 50 per cent of the remaining.

**CHAIR:** When you say ‘drop' you mean return it to the state?

**Ms Hansen:** Yes.

**CHAIR:** In terms of blocks that have been subject to exploration and perhaps have not been converted to leases, the action required before it is relinquished is relatively minimal; would that be right?

**Ms Hansen:** For exploration I would imagine that would be the case.

**CHAIR:** That would be useful for the state if not much more needed to be done to that land. It certainly advantages your members as well if that counts towards the overall relinquishment outcome if you return those exploration blocks at an early stage.

**Ms Hansen:** I imagine that is true. I understand the department's intent of these changes to relinquishment is more about operational efficiency, because they are changing it to be only at year 5 that you have to drop half of the land and you are allowed to vary that requirement in very strict circumstances only. I think the main saving for the department and for the government is in terms of operational efficiency.

**CHAIR:** Is there anything more that we need to elaborate on that? We have talked a little bit about the complexity. Is there anything more that you want to add on what is outlined in this bill on the relinquishment process?

**Ms Hansen:** The bill outlines various scenarios. If your tenure is at year 4 and you have met your relinquishment requirements at year 3, going forward you have to do this. If your tenure is at year 6 and you have met your relinquishment requirements of year 5 and year 3, it goes into those different scenarios. I think it is just that we have not had the time to work through it. There are a few scenarios that do not fit into those boxes as such.

The one that is particularly concerning for us is new section 860. It talks about if you have already dropped 70 per cent of your tenure. Your tenure is over five years old and you have met your relinquishment requirements. That means that you have dropped 70 per cent in those first five years. The trouble is that you could have relinquishment variations that have been approved so that you have dropped less than 70 per cent, but it was approved by the department. Your tenure could be old enough that your relinquishment requirements back then for years 3 and year 5 were different, so you would not have met the 70 per cent either, but the tenure is that old that at the time you did meet your current relinquishment requirements. There are a few nuances that need to be worked out.

My understanding is that the department has tried to account and give a little cushion for this through new section 855. It is new in the bill. It talks about being able to apply to vary your conditions if your tenure is current at the time the bill passes so that you have an existing tenure. You would be able to apply for variations of your conditions under what is now the current system, but it would be the old system. You do not have those limitations on applying for a variation, which is good. It is really valuable.

There are just a few concerns that, yes, it is a condition of your tenure, of your relinquishment requirements. You could vary it that way as a condition on your tenure, but relinquishment requirements are also legislated requirements. You could vary the tenure but you are still bound by these requirements in the bill. Sorry, I am conscious that I get right into the nitty-gritty with this.

**CHAIR:** Essentially, what you are doing is anticipating nuances or scenarios in the future. It is not saying, 'These are the problems that we have experienced so far.'

**Ms Hansen:** The bill has not commenced, so it is difficult to say. There are certain scenarios where you can step out what would definitely happen under these provisions in the bill and see that it is not really going to work in certain ones. We can do that work with the department. I understand that they are indicating they will be stepping through some of the transitions.

**Mr WEIR:** You made a comment about the potential for going through the native title process twice with the amalgamation of leases. Have you had any more clarification around that, or do you still have concerns about that?

**Ms Hansen:** We have not had any more clarification. That is just a point of whether you could have your PLs being amalgamated as well. There is a bit of nuance about it because, potentially, it is inconsistent. It is a future act, so it would trigger your native title. If you had something like an area-wide ILUA, you would be okay. It is a bit of the detail. We have not had any further clarification from the department.

**CHAIR:** The time allocated for the session has now expired. We have one question on notice about your view on appeal rights when the minister varies conditions. The committee would appreciate if the answer for the question could be provided by close of business on Wednesday, 3 April 2019. Thank you very much for your attendance today.

## GUERIN, Mr Michael, Chief Executive Officer, AgForce Queensland

## MILLER, Dr Dale, General Manager, Policy, AgForce Queensland

**CHAIR:** I now welcome representatives from AgForce Queensland. Would you like to make an opening statement?

**Mr Guerin:** I would like to thank the committee for extending the opportunity to make a submission and attend this hearing regarding the wideranging Natural Resources and Other Legislation Amendment Bill 2019. AgForce is the peak rural group representing beef, sheep and wool and grain producers in Queensland—industries that generated around $7.2 billion in gross farm-gate value of production in 2016-17. Our purpose is to advance sustainable agribusiness and to facilitate the long-term growth, viability, competitiveness and profitability of these industries.

As the Queensland Resources Council and the Law Society have pointed out in their written submissions, this is a broad bill seeking to amend a large number of acts—we understand around 29—with a relatively limited time frame to consider the amendments. As we and a number of other submitters have highlighted, elements of the bill infringe fundamental legislative principles and, therefore, should be given greater consideration. AgForce has focused its submission and today's comments on some areas of key interest to its membership. In this opening statement I will touch on some of the more important issues from our submission.

The bill seeks to remove the requirement to create and table an annual report on foreign ownership under the Foreign Ownership of Land Register Act 1988. To be clear, given the benefits that have flowed from foreign investment, AgForce supports commercially motivated foreign investment in broadacre agriculture where it is aligned with Australia's national interests. Transparency is key to securing community confidence about this investment, so AgForce supports appropriate government oversight of this investment without reducing the attractiveness of Australia as an investment destination. Whilst supportive of streamlined reporting, the removal of duplication and reducing the statute book, as identified by the Law Society, we do not currently view the high-level Commonwealth's foreign investment report as a like-for-like replacement for what is in the state report. No estimate of cost savings to government was provided in the explanatory notes.

While protecting investor privacy, reporting at the regional or local government level rather than simply the state level allows a more informed discussion about investment trends and agricultural assets. Given that the data is being collected in any event under the act, providing the summary report is consistent with the government's commitment to open data where appropriate, AgForce supports the continuation of the current public reporting.

The bill also proposes a new power of entry for authorised persons to access landlocked state land across adjacent freehold, leasehold and trust land to carry out activities where entry cannot be negotiated in the first instance and there are no other reasonable practical routes. The proposal is concerning, particularly in light of the diminution of other property rights, such as under the Vegetation Management Act 1999, and the deficit of trust that agricultural and other landowners currently have in this government. This bill provides that the chief executive has the power to provide authorisation for persons to access land, either freehold or leasehold, without compensation. Rather than simply mandating access to private land, AgForce would support instead the government developing an access agreement style approach that provides protections for the interests of the landholder. The Queensland Law Society in its submission also identified a number of relevant considerations, including biosecurity risks, adequate notification methods, and time frames and fairness. Nowhere in the explanatory notes or consultation materials has it been explained how these items will be addressed.

In closing, the bill also amends other water legislation to improve operational efficiency and strengthen compliance and enforcement provisions. Primary production businesses and producers' livelihoods are built around access to water. To deliver the confidence needed for making significant financial investments, agricultural water users must know that their access to water is secure and that their share of the available water is certain. Clear provisions and robust compliance requirements and enforcement are necessary elements in delivering that confidence to all water users and should be applied in a fair and reasonable manner. AgForce does not oppose the proposed deterrents to noncompliant water use.

Again, we thank the committee for the opportunity to appear today. We are happy to take any questions the committee might have. Given the technical nature of many of the amendments, we may need to take them on notice to provide an adequate response. Thank you.

**CHAIR:** Thank you. One of the issues you have raised is about access across land to access state land. In your submission you have said that there is a fear of state officers going over the land and perhaps reporting back to the Herbarium about whatever they may have seen on that land. Has there been a case of that happening?

**Mr Guerin:** I would have to take that on notice, but I can provide some explanation for that concern if that is helpful to the committee.

**CHAIR:** Yes.

**Mr Guerin:** There is a reverse onus of proof in terms of the blue dots for identification of those flora and fauna elements on land. For example, if a tourist or a member of the department—or anybody—spots something that they consider it might be, that is lodged on the map and there is a reverse onus of proof on the landholder, at the landholder's expense, to get that either extinguished or recognised. This perpetuates that. People can walk across landholder land without necessarily the adequate experience and identify something that might be. Then you have a reverse onus of proof and a cost on the landholder that comes from that.

**CHAIR:** Is one of the fears that there may be some vegetation spotted that the landholder would have some fear about leading to a change of classification on the land? Is that the basis of that concern?

**Mr Guerin:** No. Ninety-nine per cent of landholders are very concerned and keen to ensure better environmental outcomes and that flora and fauna that should be protected is protected—that it is identified and dealt with correctly. That is not the basis of the concern. The basis of the concern is, as I have tried to describe, the reverse onus of proof and the costs in compliance and issues that arise from a system that puts in place a reverse onus of proof being exacerbated through what is proposed in this legislation from people walking across land.

**CHAIR:** Once again, you will take that on notice. We have not had any experience of that happening in this case. You talked about the access agreement approach. In the cases where an officer has to traverse land to get to state land, in every one of those cases they would need to have an access agreement. Would that not be onerous for the state to do that?

**Dr Miller:** I think it has been identified that there are about 50 parcels across the state where this is an issue. It is not a widespread problem, per se, which is why we are wondering why there is such a widespread response to it in terms of the way the government is going about requiring access. Our questions are: under what conditions does the department expect not to receive that negotiated outcome, and are there ways that we can work together to have a set process beyond that point where those differences of opinion can be negotiated effectively? It just seems a little bit of a blanket approach to what seems to be a relatively small number of parcels where this is an issue.

There does not seem to be much in the way of explanatory notes about steps that have been explored to deal with these issues. Are there other mechanisms that we can look at, such as easements being placed in there, or are there other ways of negotiating with landholders to see that agreement reached? It just seems a little bit forceful, in the absence of achieving a negotiated settlement that the next step is to force that access.

**Mr WEIR:** You have highlighted that one of your concerns is weed and erosion. State owned land does not always have the greatest reputation for being weed free. If you had an access agreement, I imagine that is an issue that would be very high on the list?

**Dr Miller:** Certainly. In general, obviously the biosecurity obligation is on landholders. I think everyone who seeks to access their land has an obligation to try and meet the requirements under the landholder's biosecurity plan. Obviously it is very concerning for landholders to manage pests, weeds and other issues when they have outside parties coming in. Where there is access to what seems to be identified as quite difficult to reach state land, there could be a problem in adequately managing potential issues such as pests and weeds, particularly on the return journey.

**Mr WEIR:** If those conditions were met through negotiation, you would think that in a large number of cases, if not all, the landowner would agree.

**Mr Guerin:** We cannot see any reason why, if those conditions were met, the landholder would not agree in accordance with the 'good neighbour' philosophy of how we operate in regional and rural Australia. The biosecurity issue, just to follow on from Dale, is one of the biggest risks to agriculture in the state. It is an enormous industry and biosecurity breaches could decimate it at any time; therefore, landholders rightly have significant obligations, and enabling negotiated access assists landholders fulfil those obligations and protect the agricultural industry and the state of Queensland.

**Mr WEIR:** Are you aware of any landowners who, when asked, have refused access to state land, which would trigger this legislation?

**Mr Guerin:** I am not aware of any, no.

**Mr MADDEN:** Following on from the questions that have been asked by the chair and the member for Condamine, I understand why landholders would want to have an access agreement with the transportability of invasive weeds like parthenium and giant rat's-tail. I want to get a bit of a flavour for what this agreement would look like. Who would you envisage the arbitrator to be when there is a disagreement with regard to the agreement?

**Mr Guerin:** I would see the access agreement being like any other access agreement. For example, we work collaboratively alongside the mining and resources industry, and landholders have obligations under various acts et cetera to think about various aspects of biosecurity: activities people need to undertake before they come on the land, when they leave the land and normal good practice settings around biosecurity. I would imagine that, in the same way we do with the Queensland Resources Council and others, we would think about an agreement which acknowledges each other's obligations and puts those into an access agreement that makes sense and refers to all of those individual obligations in a way that is useful and helpful. I would not see it going beyond that. The biosecurity obligations of landholders are very clear. They are very stringent. We support that in terms of the protection of our industry, so we would simply seek to have those provisions put in the land access agreements for the 50 parcels of land. It is a matter of public record that we are quite concerned about some of the biosecurity risks on state land, and we would like to protect that through recognising our obligations in the access agreement.

**Mr MADDEN:** You do not see any need for a body to be an arbitrator?

**Mr Guerin:** Yes, we are generally supportive of an arbitration body or somewhere to go in the event that an agreement cannot be reached in the normal course. We would like that body to have some independence, and a recognition of that independence is important. We would support a third party to oversee that.

**Mr MADDEN:** In a similar format to the make-good agreements?

**Mr Guerin:** Exactly the same as the make-good agreements.

**Mr MADDEN:** The same framework?

**Mr Guerin:** The same framework, yes, because we are dealing with the same issues.

**Mr BATT:** In your submission you say—

To claim that the new power introduced in this Bill to enter land continues existing requirements under the Land Act 1994 is misleading.

Can you explain what the issues are with that claim?

**Dr Miller:** My understanding is that this bill looks to deal with adjacent land and adjoining land in terms of continuity from, presumably, a decent road or other access point through potentially a number of properties to access state land. From that perspective it is effectively a jump further beyond what we have seen previously. It is not just authorised officers accessing that particular parcel of land to undertake their duties: that opportunity could be afforded to every parcel of adjoining freehold land across the state. We understand it is limited to those cases where there is effectively landlocked, unallocated state land that they cannot get to. From our perspective, to say that it is just a simple continuation does not highlight the further extension of the powers that are being sought.

**Mr BATT:** We have not discussed foreign ownership yet this morning. What are your issues with that? I know you would say that the state says the federal government already has that under control, but you have at least four or five different reasons as to why the state needs to continue with that. Can you go over that a bit more?

**Dr Miller:** We have had the state system for quite a number of years. It links back to titles and reporting. We had quite significant penalties for failure to report, including forfeiture of land, so that was seen as quite a robust incentive for people to make sure that the state was kept informed about foreign ownership. We have seen the Commonwealth Government come in and introduce a reporting framework in response to community concerns around levels of foreign investment, specifically with agricultural land. That has been welcomed, but the level of reporting that we see under the Commonwealth system really only comes down to a state level and does not delve below that. It is not quite apples and apples in terms of the definition of foreign investor. There are slightly different systems under the state and Commonwealth for the definition of leasehold land as well, up to 20 years and leases beyond that. The value of annual acquisitions is not reported either within the federal system whereas it is in the state system; however, the state system is not perfect either.

In the absence of a Commonwealth system we were quite supportive of having state reporting, because it actually shed some light on public discourse, debate and discussion around levels of foreign investment. As Mike mentioned in our introductory statement, I certainly see quite significant

benefits with foreign investment for agriculture and supporting communities, but it is about making sure that it is transparent and there is community confidence around it. An amalgam of the two reports would be ideal. In the absence of the Commonwealth reporting to a regional level, effectively giving value and understanding of where the significant investments are flowing from, we think the state system should be continued.

**Mr Guerin:** Capital creates jobs, holds communities together, builds communities, allows schools et cetera to stay in communities and builds industry. Where the capital comes from does not make a difference to the economic activity that it builds in towns, but you can build confidence in the community about foreign investment if you have some level of disclosure about it on a regular basis. The state provides that in a better way than the Commonwealth at the moment, so it comes back to our concern about removing the ability to have that public discourse with some reasonable information at hand. Foreign investment or any investment of capital provides that critically needed economic underpinning, and the confidence comes from understanding where it is coming from and being sure that it is in the community's best interests.

**Dr Miller:** We note that the Queensland Law Society's submission talks about trying to streamline statutory reporting, and we are supportive of that. In this case we see there are benefits in continuing with what we currently have.

**Ms PUGH:** Dr Miller, with regard to the 50 or so land agreements you anticipate you would need, how long do you think that process would take, and what do you think that would look like in terms of actually thrashing out 50 individual negotiations?

**Dr Miller:** The assumption is that you would need access to those 50 land parcels. Presumably that would not all happen on day one and there would be a lead-in process for those conversations to happen. We would be hopeful that in the first instance the landowners and the state could reach an agreement without necessarily needing to go down a more formal pathway. A voluntary agreement is always preferable. Where there are significant disagreements in terms of how that should progress, I think it is worth having the conversation. In our engagements with the resource sector we have seen that can be a reasonably speedy process, but if there are intractable views then it can take quite a long time, hence having some sort of body to help adjudicate a way forward is a positive.

**Ms PUGH:** Are you aware of any precedents where state government bodies or inspectors have spread weeds from one space to another?

**Mr MICKELBERG:** I can give you one at my place.

**Ms PUGH:** The question was not directed at you, member for Buderim.

**CHAIR:** Thank you, members of the committee.

**Dr Miller:** I am personally not aware, but we have certainly have people within our organisation who would be happy to furnish you with some advice on that.

**Ms PUGH:** So you will take that one on notice?

**CHAIR:** Yes, we will take that question on notice.

**Mr MICKELBERG:** I am happy to expand on the last point. On my block I have had the privilege of Energex spreading a bit of rat's-tail through my block, so there are certainly cases of that happening.

My question relates to the process for ensuring that faults with meters are identified and repaired. In your submission you are broadly supportive of that provision, but your raise concerns with respect to timeliness and the ability to harvest water in the event a fault has been identified. You talked about alternative evidence of use. What sort of alternative evidence would you see as being workable in that situation?

**Dr Miller:** The context for those comments is largely enabling flow harvesting, where pumps are effectively out of water, until the water is there. It is quite difficult for irrigators to ensure that their meter is not faulty until they start pumping. It is complicated where you might only get one or two flows a year, and it is vital to the success and profitability of your enterprise to access it, that they can do so. The department appreciates those challenges and is looking at having alternative evidence bases. That could be logs of pump activity, if you like, as opposed to the water flow or the actual electricity bills that are associated with the pumping of water. There are telemetry options that can help systems provide an alternative evidence base by which an irrigator could indicate to the department, 'I understand the meter is faulty. Here is the evidence.' The pumps are at a set rate of take, if you like, so they can easily back-calculate what volumes have been taken through that process.

**Mr MICKELBERG:** In relation to the foreign ownership register, my understanding from the department's previous evidence before the committee is that that information would still be collected and held at the Titles Office level and would be available or you would have to go and look for it. My question is: what value do you see in that information being reported in a publicly available report as opposed to an individual or an entity having to go and search for that information?

**Dr Miller:** I think the advantage to date has been that we have had a consistent report coming out, so it has enabled us to make comparisons across time on investment levels and enabled everybody to be speaking the same language, if you like, around the information that we have at a state level in terms of investment. If you provide us with raw data without the analysis and the assessment that goes with it, then you run the risk of people talking about different things. As we have seen between Commonwealth and state reporting, there is already some variation in how definitions are applied. Having a single report that is consistent which everybody works to has advantages. Returning to the idea of informed debate, we want people to be talking about the same thing rather than getting confused and disagreements arising because of it.

**Mr Guerin:** Our members tell us that it is really important to have ongoing community conversation, so the more we can have a consistent set of data and some analyses, as Dr Miller talked about, the richer that community conversation is.

**CHAIR:** There is some concern that we are furnishing the chief executive with powers to get access with insufficient regard to the rights and liberties of landholders. Surely there are a number of departments now with those particular powers to enter land. Hasn't the sector already factored in access to their land by a number of different departments?

**Mr Guerin:** The big challenge for people who manage land is recognising and implementing their obligations against the pressures of law and rights of access. Take biosecurity as an example. If a chief executive is able to make a unilateral decision to allow a member of the department to walk across the land and there is a biosecurity incident, how is that managed? Earlier we talked about having an independent arbiter or someplace we can go if the 50 agreements are not able to be reached in the normal course. To us, that is a far more helpful way of trying to continue to recognise our obligations around things like biosecurity.

Within the resources industry thousands of agreements have been put in place through a system of sitting down and working through landholder access agreements deal by deal with a general template recognition of obligations and working from there. As the resource sectors move in and out of areas, the community consultation programs, the meeting programs, the conversations and how that results in the many thousands of agreements we have in place—which work well—is a great example of where that can work. In a worst-case scenario, the independent arbitrator is a place where both parties can go and have it considered from an independent perspective, so we would encourage the continuation of that. As I have said, our concern comes from our obligations, both under law and morally, in terms of looking after the land and handing it on in a better state than we found it.

**Mr WEIR:** You expressed an area of concern relating to outcomes-based work programs for exploration authorities. Can you expand a little bit on your concerns in that area?

**Dr Miller:** It is probably largely in moving from what is a relatively prescriptive annual program of set activities that is well understood to an outcomes based process, which is fine in and of itself. It is about understanding the implications or the clarification around the triggers by which any issues can be identified, particularly around landholder impacts where you do not have that level of certainty or clarity around the actual step. We are all for providing flexibility where appropriate, but it is also about being transparent around that and there being no loss of clarity for the landowner or the department, for that matter. We probably need to understand more clearly in terms of changing from a scheduled work space process to an outcomes based process—and that would be a question for the department—if there is any diminution in the capacity to identify issues as they are emerging and also being able to respond to that.

**CHAIR:** The time for questions has expired. We have some questions on notice: firstly, cases where officers have reported to the Herbarium on the presence of vegetation, weeds—and I know that is more vegetation; secondly, examples of the department or state officers spreading weeds or breaching biosecurity on private land. We will ask those questions of the department as well. Those answers to questions on notice are due back by close of business on Wednesday, 3 April. Thank you very much for appearing today.

**Proceedings suspended from 11.32 am to 11.52 am.**

**KRULIN, Ms Vanessa, Senior Policy Solicitor, Queensland Law Society**

**PLUMB, Mr James, Chair, Mining and Resources Law Committee, Queensland Law Society**

**POTTS, Mr Bill, President, Queensland Law Society**

**REARDON, Ms Karyn, Member, Alternative Dispute Resolution Committee, Queensland Law Society**

**CHAIR:** I now welcome representatives from the Queensland Law Society. Would someone like to lead off with an opening statement?

**Mr Potts:** Thank you for inviting the Queensland Law Society to appear at the public hearing on the Natural Resources and Other Legislation Amendment Bill 2019. As many of you will know, the Queensland Law Society is the peak professional body for the state's legal practitioners, over 13,000 of whom we represent, educate and support. Our central ethos is advocating for good law, which is where you folk come in, and also for good lawyers. The society proffers views which are truly representative of its member practitioners.

The society is an independent, apolitical representative body upon which government and parliament can, and we hope does, rely upon to provide advice which promotes good, evidence based law and policy. I note that the Queensland Law Society was consulted during the development of some aspects of the bill and I would like to thank the government for the opportunity for consultation at that early stage of the legislative process.

As this bill seeks to amend some 28 separate acts plus various regulations, we have been necessarily required to limit our submission and, therefore, our comments here today. Similarly, we cannot have a subject matter expert here today on every aspect of the bill. If it is necessary, we may have to take some of the questions on notice. We hope not. To address some of the issues raised in our submission I now refer firstly to Karyn Reardon, who is a member of the QLS Alternative Dispute Resolution Committee.

**Ms Reardon:** I would like to speak to division 3A of the bill, which provides an amendment to the Land Act. In particular, it provides a process for resolving disputes under particular subleases. Firstly, QLS welcomes the proposed division 3A of the Land Act. Providing pathways to resolve disputes through mediation and/or arbitration both relieves pressure on the judicial system and provides pathways to earlier cost-effective dispute resolution for lessees and sublessees.

The explanatory memorandum to the bill explains that the intent of this particular provision is to give the parties the option to seek a binding arbitration. The parties have the option to make an arbitration agreement under this act. Irrespective of these amendments, parties to commercial disputes in Queensland have the option to make an arbitration agreement under the Commercial Arbitration Act.

QLS's primary concern with division 3A of the Land Act is that there ought to be consistency as to when, how and why arbitrators' decisions can be made in Queensland and, in particular, how they might be set aside. There are two fundamental differences between an arbitration as it currently stands under the Commercial Arbitration Act, which is currently available to parties, and how it would be amended if division 3A came into effect, essentially applying an extra layer of regulation on arbitrations for these particular types of arbitrations.

The changes are twofold. Firstly, under this particular act the amendment proposed by clause 339T would restrict review of an arbitrator's decision to circumstances where there has been jurisdictional error. By comparison, under section 34 of the Commercial Arbitration Act, an arbitrator's decision that is obviously wrong and/or relates to a question of general public importance may be reviewed if the issue substantially affects the rights of one or more of the parties and it is just and proper in all of the circumstances for the court to determine the question. While there is a need to facilitate the binding nature of arbitratorial boards, this needs to be balanced against the need for avenues for review in appropriate circumstances.

The second layer of divergence between arbitrations under this bill and arbitrations as they currently stand under the Commercial Arbitration Act relates to the treatment of costs. This bill anticipates that costs will be shared equally between the parties, effectively removing the arbitrator's discretion to award costs. The typical rule of thumb is that the loser might pay the other party's costs. This raises concerns where there is a significant power imbalance and, in particular, significant

financial imbalance between the parties. Parties with deeper pockets will be very happy to share costs fifty-fifty, particularly if they have a tenuous claim or tenuous grounds for claim. This potentially puts parties with not such deep pockets at a disadvantage.

Particularly in circumstances where the Commercial Arbitration Act already provides a mechanism that is well understood by arbitrators and lawyers who regularly participate in arbitration, the Law Society submits that it would be in the interests of parties and, indeed, in the interests of encouraging parties to enter into an arbitration agreement if the type of process available to lessees and sublessees under the Land Act was equivalent to the existing process.

**Mr Potts:** Could I ask James now to address with respect to the MRA and PAG act in terms of ministerial discretion?

**Mr Plumb:** I want to make one short comment at the outset of this particular hearing and that is our concern associated with the proposal to insert a power for the minister to unilaterally amend, delete or add a condition to an exploration permit without what we would call due process. The concern is that denying the holder of those permits a right to have input into the process and for that input to be considered and then there potentially to be a legislative right of review rather than reliance on judicial review could have some unintended consequences, particularly for the holders of those mining permits. I am happy to answer any questions that the committee might have on that topic.

**Mr Potts:** That is our commencement statement.

**Mr MADDEN:** My questions relate to the Foreign Ownership of Land Register. I gather your submission is that you do not object to the provision in the bill that will remove the annual reporting of foreign ownership. Am I right? You do not oppose that part 4, clause 36? It removes section 16, which maintains the act as it is, but just removes the one clause that says it requires annual reporting. I want to clarify what the Queensland Law Society's position is about that one change.

**Mr Plumb:** I might be wrong, but I am not sure that we have made a particular submission on that. My personal understanding is that the change is to reflect the fact that that register is required at a federal level and they see it as an administrative double up. The particular change that you are talking to, I am sorry, I am unaware.

**Mr MADDEN:** It is just that in your submission—and this could be a summary—it says that the Queensland Law Society suggests—

In light of the federal reporting framework in relation to foreign land ownership, there is now an unnecessary duplication of reporting requirements under the State and Commonwealth frameworks.

The Queensland Law Society suggests that 'it is timely to review Queensland's Foreign Ownership of Land Register Act 1988.'

**Mr Plumb:** My apologies. That is part of a committee that is not represented here today. We can take that question on notice.

**Mr MADDEN:** If you could. I really want to clarify whether you oppose or support that provision. Am I allowed a supplementary question?

**CHAIR:** Certainly.

**Mr MADDEN:** If it is another committee, Mr Plumb, just advise me accordingly. Do you see any advantages in maintaining the Queensland annual reporting?

**Mr Plumb:** Again, we will have to take that on notice.

**Mr MADDEN:** I am sorry. I apologise.

**Mr Potts:** Member for Ipswich West, perhaps the point that you tried to address in whether there is a double up or not is whether, firstly, it is administratively unnecessary or cumbersome but, secondly, should Queensland as a sovereign state keep a solid record of, who in fact, has interests in mining leases within this state so that we can at least see whether there are incursions, if I can put it that way, in ownership across the broad spectrum. Is that the public policy issue to which you allude?

**Mr MADDEN:** I think you have partly answered my question as to the need for an annual reporting so that there is public disclosure as to global issues rather than individual land searches, which is the alternative—that you go in and you do a land search on one block of land. In one report, you can see trends.

**Mr Potts:** Exactly. It may be that across a series of leases across a series of areas you might see the same players or, in looking at the leases, you may see as least aggregations of the same players, to use a colloquial term, but using different mechanisms.

**Mr MADDEN:** There was some suggestion by AgForce that the reporting by the Commonwealth did not drill down into any of the detail that the Queensland report does.

**Mr Potts:** Each state must make its own policies as to what is best for its own citizenry. There is nothing that would preclude the state from doing that. If the federal framework was seen by the state to be either insufficient, or not necessary, that would be something that we would address. I note that our submission says that we considered that it is timely to review it and to consider whether it should be repealed. Perhaps the better question is whether it might be enhanced.

**Mr MADDEN:** Yes. Perhaps if you could take that on notice?

**Mr Potts:** If we could take that on notice?

**CHAIR:** We will take that one on notice.

**Mr WEIR:** Mr Plumb made comments about the powers of the minister. I asked a question earlier of the Queensland Resources Council about the change from exceptional circumstances to exceptional events. Is that one of the areas that you are talking about and the broad interpretation that that would cover?

**Mr Plumb:** Yes. I note that in the explanatory note there is reference to an operational policy that will be developed to give some more comfort to industry as to the circumstances in which that power would be enlivened. Having said that, I think the position of the QLS is that natural justice be afforded and that submissions be taken from the holder. I note that the definition of 'exceptional circumstances' refers to those circumstances impacting the holder and the holder's ability to comply with the terms of the tenure. It seems as though it would be appropriate to seek input from the holder as part of that process and then have due regard to that input, if given.

**Mr Potts:** We would note, too, that, so far as those circumstances, whilst there might be judicial review, we stress that that can be both costly and time consuming both for the applicant and for the minister also as respondent.

**Mr WEIR:** I note that there was also a concern with the amalgamation of petroleum leases—that that might enliven another native title process. Is that your understanding?

**Mr Potts:** It is broadly. It clearly cannot be excluded. The recent High Court decision in Timber Creek, I note for the committee's benefit, sets out now how compensation may be calculated. This is an area that is both live and somewhere where we must tread very carefully.

**Mr WEIR:** Would you have any proposal of how that could be avoided?

**Mr Potts:** I believe James might have some input on that.

**Mr Plumb:** I am sorry, did our submission address native title concerns associated with amalgamation of leasehold?

**Ms Krulin:** Not native title concerns specifically, but in terms of that consultation—whether that is possible prior to such unilateral agreement being considered or at least an embedded review process within the legislation, which would perhaps avoid some of these issues in a judicial review process.

**CHAIR:** It may be something to follow up with the department perhaps.

**Ms PUGH:** In the summary of your submission you have noted the introduction of new measures for the access to state land and—

..strongly supports the intention, indicated at page 19 of the Explanatory Notes, that the 'administering agency will develop the appropriate policies, procedures and training to ensure that all powers are exercised lawfully and appropriately.'

Are you able to expand a little bit on that for us, please?

**Ms Krulin:** We understand that the provisions proposed in the bill are inconsistent with fundamental legislative principles in terms of considering the rights of individuals in this aspect, but we also acknowledge that, as set out in the explanatory notes, it is to ensure that state land is properly managed and maintained and that is also in the public interest. We recommend that the guidance and training materials proposed will be developed in such a way that they can assist both parties and that there should be adequate and reasonable consultation that occurs to ensure as far as possible that the rights of landholders and others are considered and their activities are considered—mustering and whatever else may be in place. We note that there are some notice requirements that are intended to try to balance those competing interests.

**Mr BATT:** You have mentioned that you have had some consultation with the department over what has come through in these 29 amendments to acts in this bill. I also note that you say that there may be unintended consequences that have not been able to be identified due to time constraints. I

am noticing a lot more that parliament is offering six weeks, which is the minimum rather than up to six months, which is the maximum, for all of these bills that we are putting through. I would like your point of view on that.

**Mr Potts:** Can I say this: consultation is something that we have for many years both promoted and, where necessary, insisted upon. Where there is no upper house of review, the committee system becomes so much more important. As you have heard, the Law Society has policy lawyers. Our members use their membership fees for no benefit apart from the general good to employ policy lawyers such as Ms Krulin beside me to go through the legislation, write submissions and deal and work very closely with our subject matter experts on our 38 committees. We are providing this resource to the people of Queensland and the government and parliament of Queensland for nothing. As I was saying to you before, we have as part of our central ethos, our central mission, good law. We want there to be evidence based law. The more consultation we get, the better, particularly where there are some acts involved.

This is just anecdotal: recently we were given four days to respond. Clearly, that is just not in anybody's interests. The more time we get the better, the more opportunities we therefore have to work on those unintended consequences across a whole range of subject matter experts. I thank you for the question.

**Mr MICKELBERG:** I will ask a follow-up question to that last question with respect to omnibus bills. You made mention earlier that this bill amends 28—I think it was the number you used—acts. Do you think that that results in good law or would we be better placed to confine bills to neat subject matter areas?

**Mr Potts:** It is a difficult answer because there are obviously different circumstances. Sometimes, omnibus bills, as you refer to them, may amend small pieces of legislation where there have been submissions over a very long period of time—for example, the Trusts Act where there have been submissions over a very long period directed at small issues that, for example, have come up in recent court cases. As a principle, we are not against omnibus bills but, when you have legislation of this kind where there is a significant impact upon the balance between private rights and the rights of the people of Queensland to have access to its resources, it is perhaps better that there be greater focus on narrow issues and greater consultation periods. They go hand in hand.

The most difficult position that we have in assisting the parliament in its important business is hoping that we have not missed anything, if I can put it that way. I do not mean this in a pejorative sense. We are but one of a series of stakeholders. We try to do our best absolutely apolitically because, for us, it is about good law. It is up to the parliament to produce, as part of the political process, policy. When we come along and there is policy, that is for you folk. What we want to give you help with is consequences, unintended consequences, whether we think it will work and whether it fits into, for example, the broader issues of parliamentary standards. There was some allusion by the member for Mount Ommaney to the 1992 legislation dealing with that. Whilst we have basic principles—for example, burdens of proof and no retrospectivity and mandatory sentencing; I know that has nothing to do with this particular committee—we simply say that more time is great for us but better focus is also of great assistance. We want to help you.

**CHAIR:** Certainly. Thank you.

**Mr MICKELBERG:** I have a completely separate line of question with respect to arbitration and alternative dispute resolution. I notice in your submission that you discuss the Commercial Arbitration Act and the provisions that are contained within the bill. You articulate some circumstances where concern might manifest in relation to power imbalances resulting in one party being disadvantaged and the lack of any ability to review or appeal that arbitration decision. Is it your view that this bill may disadvantage a party more significantly than the Commercial Arbitration Act?

**Ms Reardon:** The cost consequences might be adverse. The limitation on rights of review may have adverse consequences, not necessarily for the party suffering the imbalance—that could go either way. It strikes me that both of those outcomes are not consistent with the policy intent.

**Mr Potts:** To be more colloquial, might is not right. It is always important when you have particularly disparate power, disparate financial resources, that we do not allow those with significant power and/or deep pockets—I think that is the phrase that we use—to utilise the system to either punish people who have a justiciable claim or a claim subject to resolution. It discourages or puts a chilling effect on the capacity of those people to properly arbitrate if they are to carry fifty-fifty of the cost, because the body that has the more money is able to throw more resources and more effort at that arbitration process.

**Mr MICKELBERG:** I note that the QLS was involved with the consultation process in relation to that provision. Presumably the rationale in relation to the lack of review was to provide some finality with respect to the decision. What is your view with respect to that approach?

**Ms Reardon:** Yes, I anticipate that was the motivation. That is also why under the Commercial Arbitration Act there are limits upon when an arbitrator's decision can be reviewed. It is a question of finding the right balance. The concern is that by limiting it to jurisdictional error there is a real risk the balance has been tipped too far.

**CHAIR:** The time for this session has expired. We have a question on notice regarding foreign ownership provisions.

**Mr Potts:** In what time limit would you like us to respond?

**CHAIR:** Answers to questions on notice should be provided by close of business on Wednesday, 3 April.

**BILL, Ms Sarah, Manager, Land Policy, Department of Natural Resources, Mines and Energy**

**COOPER, Ms Claire, Acting Executive Director, Mineral and Energy Resources Policy, Department of Natural Resources, Mines and Energy**

**CUSSEN, Ms Catherine, Acting General Manager, Analytics, Regulation and Commercial, Department of Natural Resources, Mines and Energy**

**HINRICHSEN, Mr Lyall, Executive Director, Land Policy, Department of Natural Resources, Mines and Energy**

**WISKAR, Mr David, Executive Director, Water Policy, Department of Natural Resources, Mines and Energy**

**CHAIR:** I welcome the representatives from the Department of Natural Resources, Mines and Energy. Would you like to make an opening statement?

**Mr Hinrichsen:** Very briefly, on behalf of the department I would like to thank the submitters for their significant efforts in providing their submissions in a pretty limited time frame. The department received those submissions last Thursday. We are in the process of working through detailed responses to the various matters raised which we will aim to provide to the committee by this Thursday.

There is one point that I would note. Submission No. 10, which relates to the Integrated Resort Development Act, is not legislation which is covered by this bill. It is not legislation that is administered by the Department of Natural Resources, Mines and Energy. It is in fact administered by the Department of State Development, Manufacturing, Infrastructure and Planning. If the committee has any need for information on that submission, we would suggest that you refer that to the relevant department and minister. Otherwise thank you, Mr Chair, we are happy to take any questions.

**CHAIR:** We have had some submissions about the use of the word ‘remediation' instead of ‘rehabilitation' regarding the act. Can you please explain: what is the intent behind this proposed change?

**Mr Hinrichsen:** I will refer that matter to my colleague Ms Cooper.

**Ms Cooper:** The intention behind these changes is quite administrative in a lot of ways. It is using different terminology to be able to distinguish between rehabilitation, which is the work that is done by resource holders in bringing back land to a rehabilitated state, as opposed to the work that is done by the department's abandoned mines unit and the activities that they are permitted under the Mineral Resources Act as well as the Petroleum and Gas (Production and Safety) Act to make sure that abandoned mines that come into the state's purview are safe, secure and stable.

The actual activities that are covered remain exactly the same. The amendments to rehabilitation activity and remediation activity are to better reflect the on-ground activities that are currently permitted. Those types of activities include being able to investigate the condition of the land. In the case of the Mineral Resources Act, to cap a mine shaft, remove or make safe structures or equipment, clean up pollution that is remaining on the abandoned mine or near it, repair erosion and prevent further erosion and other similar activities.

There are some changes before the House in terms of the land, explosives and natural resources amendment act which also set out remediation in terms of the Petroleum and Gas (Production and Safety) Act which are very similar activities but more tailored to petroleum and gas tenures. The idea is to make sure that the terminology is consistent throughout all of the different resources acts and to make that differentiation between what the department does when a mine becomes abandoned versus resource holders' obligations and activities to be able to rehabilitate a site.

**CHAIR:** It is maintaining the current standards; it will not lead to a lessening of standards. Is that correct?

**Ms Cooper:** That is correct. There is no lessening of standards. It is the same activities; it is just different terminology to make it clear which activities we are talking about.

**Mr WEIR:** One of the issues we talked about this morning was access to state owned land. How many times has access to that land been refused by landowners that would warrant this legislation?

**Mr Hinrichsen:** I do not have any figures on how many times landholders have specifically refused, but there are currently no powers to access that intervening land so it does need to be by the landholder's consent. For that matter, under these provisions it is very much a last resort. Before an authorised person could enter that intervening land they must attempt to negotiate entry by consent. It is only in those situations where consent is not granted that this power could be utilised to enter that land. As I think I mentioned in the original briefing to the committee, it is only to undertake very specific functions—either in relation to undertaking compliance activities on the said piece of state land or to ensure the proper management of that land, for example, for weed control, for hazard reduction burning and the like.

**Mr WEIR:** We heard—I do not know if the figure is correct—about 50 lots may be identified here. Have negotiations occurred with those landowners to secure access for those purposes?

**Mr Hinrichsen:** Where access is required, quite often it is with the consent of the intervening landholder. In future, that more often than not will continue to be the case, I am sure.

**Mr WEIR:** So the state has agreement from a certain number of those landowners? Of those 50 the state has an agreement with how many?

**Mr Hinrichsen:** Those agreements can be formal through to very informal. My understanding is that most of those arrangements are at the informal end of that scale.

**Mr WEIR:** So there are no official agreements with any of those 50 landowners?

**Mr Hinrichsen:** I am not aware of any official agreements. Most landholders have good working relationships with our regional offices. The type of scenario—and I recall mentioning this to the committee at the original briefing—was if there was some compliance activity to be undertake on that state land—for example, some unauthorised occupancy—the landholder concerned may well feel that if they were seen to be aiding and abetting the department in undertaking that compliance activity then that could have some implications for them in the communities they are in. In one scenario that has arisen recently the feedback from the landholder was that they would prefer the agency to undertake access over their land through statutory means rather than through consent. That really is the genesis of this provision.

**Mr MADDEN:** Thank you very much for coming in today. An issue that has arisen with previous submitters today has been the changes with regard to the minister having power to unilaterally impose, vary or remove a condition with regard to an exploration permit. What are the current arrangements with regard to the minister's power to unilaterally impose, vary or remove a condition for an exploration permit? In other words, what are we changing here?

**Ms Cooper:** The submissions that were made earlier today spoke about the minister's power, but it was a little unclear about which power because there are two. In my answer I will detail both. There is a power which has been mentioned by Queensland Resources Council and APPEA under the Petroleum and Gas (Production and Safety) Act, and that one is a conditioning power for the minister to impose appropriate conditions on an authority to prospect on grant. The purpose and the intention of this particular provision is to clarify that the minister already has the power to be able to make a condition on grant. Currently the legislation is not terribly clear.

There is the power for the minister to be able to call for tenders and put rules around how those tenders should be received, but when there is the natural grant there is just a description over ‘there will be conditions that will be imposed' but it does not actually say ‘the minister may impose'. It is really to clarify that the minister does have that power. It is very administrative in nature to make that clarification quite clear that there is that power. It is simply to clarify that that still exists. We will consider that clause if it has any unintended consequences.

**Mr MADDEN:** Following on from that, and I am talking about clause 260 just to make it clear—I am sorry, I should have said that at the beginning—the term 'exceptional event' is used in that clause. Is that a new term, or has that always been the case with regard to these powers of the minister?

**Ms Cooper:** This is a new power for the minister so it is a new concept of exceptional event. There had previously been the use of ‘exceptional circumstance’ in a departmental operational policy, so there has been usage of the term 'exceptional circumstance' that the industry is quite familiar with because they have been familiar with that particular policy. The intention here is to make that distinction between an event, which is something that is a bit more outside of the control of any of the parties.

The idea of a circumstance is that it can kind of be that a party or a holder may be able to influence the types of circumstances. In the operational policy, it might be things like within the holder's control about their financial circumstances or things that are happening on the land, whereas

this one is really about your natural disaster, your global financial crisis, things that negatively impact on a whole host of holders. It gives the minister the ability to actually put some positive variations in place to be able to help those holders if such a natural disaster event occurs or if a global financial crisis occurs. They are able to proactively go, 'This is going to affect a lot of different holders.' One way is to actually make those changes to ensure that the holders, if they cannot comply with their permits, are able to do so through that power.

**Mr MADDEN:** Is the reason why there are no appeal processes on the minister's powers because of that extraordinary nature of these events?

**Ms Cooper:** There is no appeal right in the legislation but there is judicial review which is open to anyone who feels aggrieved by the decision. That is how the Judicial Review Act works. If you feel aggrieved by a decision, then you make an application. We have not included necessarily a natural justice process because of the kind of urgent nature of these events. Often there is a need to do something really quickly. Also, the intention is to actually have a positive impact on holders. There is no intention to adversely impact on holders. It is about being able to address a particular emerging issue which is an emergent issue and being able to deal with that quickly. That is the reason. Because it is a positive change, we do not see that there is going to be anyone who is going to be aggrieved by it and therefore there is no natural justice in that.

**Mr MADDEN:** Thank you very much for clarifying that matter for me.

**Mr BATT:** The Queensland Law Society said to us, and it is in their submissions, that one of their main concerns is the dispute resolution side of things and that the cost now will be split under this legislation rather than being awarded by whoever is doing the dispute resolution. I am paraphrasing, but they do not believe that would be as fair as the current system. Could you comment on that?

**Mr Hinrichsen:** As I recall the Queensland Law Society acknowledged, they have given their time very, very freely to work with the department in developing these provisions, and we appreciate them doing so. There are a couple of points where in the final policy the minister diverted, albeit slightly, from the advice that the Queensland Law Society provided, and the Queensland Law Society have documented those points.

In relation to the award of costs, the objective was first and foremost to be very, very clear. When parties do agree to use an arbitral process to resolve their difference, the default is fifty-fifty. Before arbitration would ever commence, it has to be agreed to by both parties. The provision, first of all, says that the default is fifty-fifty but there are circumstances where it can be otherwise—where the parties agree or where the arbiter makes an assessment that the costs should be split in some alternative fashion.

I guess it was competing tension between being very, very clear so the process could happen as expeditiously as possible but providing the parties and then ultimately the arbiter with some discretion if they believe the circumstances justified a different sharing arrangement of costs. To be very, very clear, neither party—the lessee or the lessor—has any obligation to engage in this arbitration process if they choose not to.

**Ms PUGH:** I want to go back to the discussion around the entry on to land. Lyall, you mentioned earlier the informal nature of a lot of those agreements. If we needed to go through and formalise all of those, what kind of time and process are we talking about there?

**Mr Hinrichsen:** The time process is probably not a great limiting factor. The legislation, as it has been drafted, basically does require in section 431ZC(3) that before there is a notice of entry given the relevant person make a reasonable attempt to contact the occupier of the adjacent land and obtain the occupier's consent to the entry. If in that scenario the landholder involved wanted a formal agreement, then the department would be absolutely open to that occurring.

There is obviously always a relevant time frame. As I heard from our friend from AgForce this morning about making sure biosecurity issues and other relevant matters were properly addressed, the department would be more than happy to negotiate on that basis. Many of these access arrangements and the provisions as proposed contemplate a start and a finish. This is not a framework that is meant for access infinitum. This is to undertake a particular activity on the land. More often than not, it will be for a period for days, weeks or months perhaps, but not an ongoing access arrangement.

**Ms PUGH:** Thank you so much. That answered my follow-up question.

**Mr MICKELBERG:** My question is also in relation to the access to state land provisions. Part 3C division 1 has some definitions and 'adjacent land' is one of those definitions. It says for adjacent land that 'adjacent land, in relation to relevant land, means land that is adjacent to the relevant land,

whether or not the land adjoins the relevant land'. In relation to the second part of that—'whether or not the land adjoins the relevant land'—are we talking about properties which, despite the fact they are not bordering state land, may need to be traversed in order to get to the state land?

**Mr Hinrichsen:** That is correct. It might be from a road that there are two properties that need to be crossed—the property immediately adjacent to the road and then a property that is between that and the state land that the management or compliance activities are to be undertaken on.

**Mr MICKELBERG:** The member for Condamine indicated earlier that AgForce suggested their understanding was that there were about 50 parcels of land across the state that were adjacent land under the proposed provision.

**Mr Hinrichsen:** Correct.

**Mr MICKELBERG:** Is it possible for the department to provide the details of those blocks of land that would be affected?

**Mr Hinrichsen:** It would be possible. It might require a little bit of time, but we have done a preliminary assessment. That reference to 50 lots is mentioned in the explanatory notes. I would just need to check with my operational colleagues to see how long it would take to get those details.

**Mr MICKELBERG:** With the consent of the committee, I would appreciate if that was taken on notice, noting that AgForce expressed a concern that this provision might apply more broadly across the state. If you are able to provide some comfort by providing that list of parcels, I think that would be useful. I am happy for that to be taken on notice.

**CHAIR:** The figure of 50 has been mentioned a lot today.

**Mr MICKELBERG:** I would like the detail of those 50.

**CHAIR:** That is a big task.

**Mr Hinrichsen:** I will just need to check, but we have previously done an assessment. I will just need to make sure that it is current and those details are accurate.

**CHAIR:** We understand there may be detail. If someone could let us know if we could get that, it would be good. Just give us an update on that one. We will touch base on this at the end.

**Mr Hinrichsen:** We are more than happy to provide that information. It is just a question of the time frame.

**CHAIR:** We are talking about the list of properties and estimated time frames.

**Mr Hinrichsen:** Absolutely.

**CHAIR:** We will take that as a question on notice.

**Mr MICKELBERG:** In relation to water meters and where there is a fault identified, AgForce suggested that alternative evidence might be considered so that water can still be harvested or used in the event that the meter is faulty. Overland flow was an example where there might be a time requirement in order to be able to use or collect that water. Has the department considered that suggestion? Does the department have a view?

**Mr Wiskar:** As I think AgForce acknowledged in their answer, we are certainly working with them on the topic that you are talking about. Obviously, in some systems throughout Queensland, what happens is that we have periods of long dry where there is not any water and then we get some rain. Hopefully, we will get some rain in some of those areas later this week. I can put in a wish for that while I am here. In essence, there are issues to be dealt with potentially with meters not working after periods of long flow. What we require in those cases is for people to do two things. One is make a reasonable estimate of what their take is, and then begin some action to repair that meter when possible.

There are potential obstacles to the repair of the meter, particularly in big flooding events. Let us assume we get a big flow in the Condamine in the deputy chair's area. It is quite difficult to traverse those areas in those circumstances, so we would be taking those circumstances into account in how we would administer this provision. That is very clearly understood in our regional offices that would be doing that work.

Again, coming back to the provision, we would expect that landowners would make an estimate which they can do via some other mechanisms. Some of the mechanisms might be pumping hours, the size of storages they might have on farm and the like. The second activity is that they make reasonable efforts to repair that measurement device as soon as practically possible. That is how the provision would be administered. We are communicating that with AgForce, and I think those discussions as they indicated were heading in that direction.

**CHAIR:** There are two parts to my question about the foreign ownership register. First, has the department ever taken any action flowing from the preparation of this report? Second, would it be beneficial to have a regime at a federal level that is consistent across all states?

**Mr Hinrichsen:** To the first part of the question, the answer is no. The report is purely for information. The registrar requires people when they lodge a transfer to declare. There are provisions around penalties for falsely declaring but usually it is on an honour system but with a high level of compliance I would suggest.

On the second point, I guess that is at the heart of why the federal government introduced its reporting on foreign ownership of agricultural land. Queensland is the only jurisdiction to have a foreign ownership of land register, which has been in place since 1988. The regulation of foreign ownership is not a matter for states; it is a matter for the federal government. The Foreign Investment Review Board has criteria associated with whether foreign ownership is in the national interest. That is not just of land; that is of assets of all forms clearly.

The register under the Foreign Ownership of Land Register Act 1988 is just to record the information. There is no power to refuse the registration of a transfer to a foreign person or a foreign entity. It is just to record the information. This provision simply removes the reporting obligation. The recording of that information obviously is still part of what will be the registrar of titles duties from this day hence.

**Mr MICKELBERG:** AgForce indicated that the current report provides comfort, if you will, for the conversation in relation to the effect on communities and also consistency with respect to the data that has been reported in that register. Noting that ideally it would be nice if it were consistent at a federal level, there is clearly less detail in the federal reporting than at the state level? Is that correct?

**Mr Hinrichsen:** I will not claim to be intimately aware of the federal report, but it is at a national level, so you would expect a different level of granularity at the state level. For example, I understand that they do not report on local government by local government.

**Mr MICKELBERG:** It also only applies to agricultural assets and not other forms of land tenure.

**Mr Hinrichsen:** The current report uses agricultural land, which has been the imperative of the federal government, but the federal government has a role in ownership, as I mentioned, of more than just agricultural land.

**Mr MICKELBERG:** Understanding the desire to remove duplication of processes, which obviously makes sense, and noting that the state reporting provides different data, has the department considered the value in how that report is used? We have heard from AgForce that they use it. Have any other stakeholders indicated that they use the data as well?

**Mr Hinrichsen:** No other stakeholders have indicated that they use the data. AgForce have clearly indicated that they do. Given that it is an information report, the state does not have a role in regulating. I presume that is suggesting that it is somehow used to influence Commonwealth government policy in that space or some other policy settings, but I am not aware as to what that use might be.

**Mr MICKELBERG:** I think they said that they used it to engage with communities in Queensland. Presumably there are other uses, not just a policy outcome, we promulgate data for. Has the department considered the value of that use as opposed to just from a policy perspective?

**Mr Hinrichsen:** The data is still going to be collected. If there is an emergent need for that data then ad hoc reporting can still be generated if the minister of the day or the parliament were seeking such information. It is still going to be recorded by the registrar. With the removal of section 16 of that act, there will not be a requirement for an annual report to be prepared and tabled.

**Mr MICKELBERG:** How would that work in practice? You said it could be prepared if the parliament or minister dictated or indicated that it should. How would that work?

**Mr Hinrichsen:** It is like a number of reports that the department periodically produces. We do not need to have a head of power in legislation, for example, to produce a report. Maybe a topical example is the Statewide Landcover and Trees Study. You will not find that referenced in the Vegetation Management Act, but obviously it is a piece of reporting that there is a lot of public interest in. By, if you like, policy, the government produces that report annually.

**Mr MICKELBERG:** I accept that sound explanation, but arguably there is a lot of public interest in foreign ownership as well.

**Mr Hinrichsen:** Arguably.

**CHAIR:** The time allocated for this session has now expired. We have one question on notice—details of the 50 lots that we talked about and an estimated time frame that it would take to negotiate those access agreements. The committee would appreciate an answer to that question on notice to be provided by close of business on Wednesday, 3 April 2019. This concludes the hearing. Thank you to the witnesses who have appeared before the committee today. Thank you to our Hansard reporters and thank you to our secretariat staff as well. A transcript of these proceedings will be available on the committee's parliamentary web page in due course. I declare this public hearing for the committee's inquiry into the Natural Resources and Other Legislation Amendment Bill closed.

**The committee adjourned at 12.49 pm.**